

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARY Jewelers, LLC.,)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04:-CV-10281 EFH
)	
IBJTC Business Credit Corp. and)	
David Molinaro,)	
Defendants.)	

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF OPPOSED
MOTION FOR LEAVE TO APPEAL UNDER § 1292 AND
REQUEST FOR EMERGENCY DECISION BY SUBMISSION**

TO THE UNITED STATES DISTRICT COURT:

Plaintiff ARY Jewelers, LLC (“Plaintiff”), files this Memorandum in Support of its Opposed Motion for Leave to Appeal under § 1292 and Request for Emergency Decision by Submission, and in support thereof would respectfully show the Court the following:

1. This matter was transferred to this Court in January, 2004.
2. This matter is currently set for trial on December 4, 2006.
3. The report of Plaintiff’s damage expert, Shirley Webster, was filed with this Court and served on opposing counsel on or about July 27, 2005.
4. Defendants filed motions for summary judgment with this Court on or about August 11, 2005 and October 24, 2005 seeking an order from the Court, that among other items, based on Ms. Webster’s report, Plaintiff had no recoverable damages as a matter of law. This Court denied

Defendant's motion in February, 2006, in effect, approving Ms. Webster's report and approach.¹

5. On or about September 15, 2006, Defendant's took another shot at Ms. Webster's report by filing its Motion to Strike Report and to Enter Judgment Dismissing the Sole Remaining Count of the Second Amended Complaint. This time, the Court granted Defendant's motion and by order dated October 24, 2006, struck the expert report of Ms. Webster, Plaintiff's damages expert.

6. On or about November 9, 2006, Plaintiff filed its Motion for Reconsideration, which this Court denied by Order dated November 16, 2006.

7. In response thereto, Plaintiff filed its Motion for Continuance on or about November 21, 2006, which has not yet been ruled upon by this Court.

8. Pursuant to 28 U.S.C. § 1292, where an order involves a controlling question of law to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, a district judge may so state in writing, which allows the Court of Appeals to permit an immediate appeal. As this Court's order stating the expert report of Plaintiff's damages expert, Ms. Webster, is such an order, Plaintiff requests of this Court a § 1292 order allowing an immediate appeal.

9. Specifically, this Court's order striking the expert report of Ms. Webster clearly involves a controlling question of law because if this order is allowed to stand, Plaintiff cannot have its economic damages. It makes no judicial sense to proceed with weeks of testimony on the involved liability issues, when, with the Court's current order in place, Plaintiff cannot prove its economic damages.

¹On or about October 11, 2005, this Court also denied Defendant's Motion to Strike Certain Material Filed by Plaintiff in Opposition to Defendant's Motion for Summary Judgment, which also attacked Ms. Webster's report.

10. As part of the requested § 1292 order, Plaintiff also requests the this Court stay these trial proceedings until such time as the Court of Appeals can rule on this important and controlling question of law.

Dated November 27, 2006

Respectfully submitted,

THE CARRIGAN LAW FIRM, L.L.P.

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CERTIFICATE OF CONFERENCE

This is to certify that the undersigned attorney has conferred with counsel for Defendant and the same opposes to the relief requested in this Motion.

/s/ Stephen P. Carrigan /s/ by Jill L. Groff
Stephen P. Carrigan/Jill L. Groff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of Memorandum in Support of its Opposed Motion for Leave to Appeal under § 1292 and Request for Emergency Decision by Submission was served to each person listed below by certified mail, return receipt requested, facsimile and/or hand delivery on the 27th day of November, 2006.

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